

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ALBERT L. HORNEY, SR., )  
vs. )  
Petitioner, )  
vs. )  
OKLAHOMA DEPARTMENT OF )  
CORRECTIONS, et al., )  
vs. )  
Respondents. )  
NO. CIV-12-1323-D

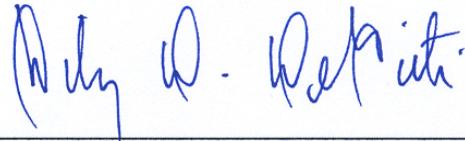
## ORDER

Petitioner, a state prisoner appearing *pro se*, brought this action seeking habeas corpus relief pursuant to 28 U. S. C. § 2254. In accordance with 28 U.S.C. §636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin for initial proceedings.

On January 10, 2013, Judge Erwin filed a Report and Recommendation [Doc. No. 5] in which he recommended that the Petition be dismissed without prejudice because Petitioner failed to exhaust his state court remedies prior to filing this action. In the Report and Recommendation, Judge Erwin advised Petitioner of his right to object to the same, and he further advised that Petitioner's failure to timely object would constitute a waiver of his right to appeal the findings and conclusions in the Report and Recommendation. Judge Erwin scheduled a January 31, 2013 deadline for filing an objection. That deadline has expired, and Petitioner did not object to the Report and Recommendation.

Accordingly, the Report and Recommendation [Doc. No. 5] is adopted as though fully set forth herein. This action is dismissed without prejudice to its refiling after Petitioner exhausts his state court remedies.

IT IS SO ORDERED this 8<sup>th</sup> day of February, 2013.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE